



Comptroller General
of the United States

Washington, D.C. 20548

146480

Decision

Matter of: Stay Incorporated Protective Services

File: B-246336.3

Date: April 24, 1992

Karl Dix, Jr., Esq., Smith, Currie & Hancock, for the protester.

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DIGEST

Notwithstanding technical deficiencies in the evaluation process and a lack of meaningful discussions in some areas, protest against the award of a guard services contract is denied since the record supports the reasonableness of the agency's cost/technical tradeoff decision to award to a higher rated offeror even when the protester is awarded the maximum number of points for the technical subfactors affected by the deficiencies.

DECISION

Stay Incorporated Protective Services protests the award of a contract to Am-Pro Protective Agency, Inc. under request for proposals (RFP) No. EOPOA-91-03, issued by the Executive Office of the President, Office of Administration, for guard services for the Office of National Drug Control Policy. Stay maintains that proposals were misevaluated and that discussions were inadequate.

We deny the protest.

The RFP provided that award of this fixed-price contract would be made to the offeror whose technically acceptable proposal was determined to be most advantageous to the government based on an evaluation in which technical factors were weighted at 75 percent and price was weighted at 25 percent. Six technical subfactors were listed in the method of award section as follows:

	<u>(POINTS)</u>
(1) Personnel experience	20
(2) Corporate experience	20
(3) Staffing plan	15
(4) Plans for managing personnel	10
(5) Plans for managing tours of duty	5
(6) Contract management plan	5

Technical subfactors were scored on the basis of a five-point scale with three representing "acceptable" and four and five representing determinations that a proposal exceeded the RFP requirements. Consonant with the relative importance of the subfactors, these raw scores were converted into weighted scores and tallied. The maximum possible weighted technical score was 75. Price proposals were scored by assigning 25 points to the lowest priced proposal and proportionately fewer points for higher priced proposals.¹

Of the 10 initial proposals received, 7 were rejected as technically unacceptable and received no further consideration.

¹The protester argues that this method of scoring price, which was not set forth in the RFP, places an undue emphasis on technical merit since, by Stay's calculations on this case, each technical evaluation point was worth over \$121,000. We disagree. The scoring scheme accurately reflects the relative weights of the technical and price factors set forth in the RFP. The use of normalized point ratings for price, that is, a point-scoring system under which the lowest priced proposal is assigned maximum price points and others are assigned points based on their closeness to the low offer, is relatively common. See Centex Constr. Co., Inc., B-238777, June 14, 1990, 90-1 CPD ¶ 566. There is nothing in the record or that has been suggested by the protester to establish that the difference in scores does not reasonably reflect the relative difference between competing proposal prices. See GP Taurio, Inc., B-222564, July 22, 1986, 86-2 CPD ¶ 90.

Stay and Am-Pro were evaluated as follows:

	<u>Raw</u>	<u>Stay</u> <u>Weighted</u>	<u>Raw</u>	<u>Am-Pro</u> <u>Weighted</u>
Personnel Exp.	4	16	4	16
Corporate Exp.	4	16	5	20
Staffing Plan	3	9	5	15
Personnel Mgmt.	3	6	5	10
Mgmt./Tours of Duty	3	3	5	5
Contract Mgmt. Plan	4	4	5	5
Total		59 ²		71

The evaluators were impressed with Am-Pro's low attrition rate, its plans for retaining personnel, its experience in providing guard services to a variety of different size government agencies as well as with the congratulatory letters from previous customers in and outside the government included in the proposal. With respect to Stay's proposal, which was rated acceptable or better in every category, the evaluators were particularly concerned about the firm's plans for retaining personnel.

Oral discussions, which in Stay's case focused on its plans for retaining personnel, were held with each of the three offerors in the competitive range and a request for best and final offers (BAFO) was issued. In that request each offeror was, among other things, asked to elaborate on its employee retention plan. BAFOs were reviewed and the contracting officer concluded that the changes contained in Stay's BAFO were not significant enough to justify a change in the firm's technical score.

²In the initial evaluation report, Stay's score was inadvertently tallied as 59 when the total should have been 54 to accurately reflect the score assigned to the proposal by the evaluators. This error in Stay's favor was continued throughout the evaluation and selection process.

³Three of the individual scoring sheets contain notes which indicate that the evaluators were critical of Stay's proposal for the absence of an employee retention plan. On this basis, Stay asserts that the evaluators--who the protester believes were overly hurried in their evaluation--simply did not read its proposal, which does contain a discussion of employee retention. We disagree with this assertion in light of the fact that the firm was rated acceptable, both initially and after BAFOs, in management of personnel (the subfactor which logically subsumes retention plans) and in light of the fact that discussions were later held seeking amplification of the firm's retention plans.

Final evaluation results for Stay and Am-Pro were as follows:

	<u>Technical Score</u>	<u>(Price)</u>	<u>Price Score</u>	<u>Total</u>
Stay	59	\$1,999,374	19.50	73.50
Am-Pro	71	\$2,090,224	18.75	89.75

Although Stay offered a 4.5 percent lower price, the contracting officer concluded that this was insufficient to outweigh Am-Pro's approximate 17 percent higher technical rating. In selecting Am-Pro on this basis, the contracting officer noted the firm's superior contract performance history and low employee attrition rate.

In its protest, Stay does not dispute the scoring of proposals on the first-listed technical subfactor--personnel experience; nor does the protester question whether discussions should have been held with regard to this subfactor. Rather, Stay objects to the scores assigned on each of the other subfactors, in essence inviting a detailed comparison of its proposal to Am-Pro's with an eye toward rescoring and asserting that the agency had no rational basis for distinguishing between the two proposals as it did in the technical scoring. Stay also maintains that meaningful discussions were not held with respect to the relative differences discerned between its proposal and the awardee's as reflected in the scores each received. In response, the Executive Office has provided the record of its technical evaluation which it asserts supports the rationality of the scoring and the agency maintains that, despite the technical discussions which were held with respect to employee retention, none were legally required since Stay was found acceptable under each subfactor.

The evaluation of technical proposals is primarily the responsibility of the contracting agency; the agency is responsible for defining its needs and the best method of accommodating them and must bear the burden of any difficulties resulting from a defective evaluation. Thus, our Office will not make an independent determination of the merits of technical proposals; rather, we will examine the record to ensure that the agency's evaluation was reasonable and consistent with the stated evaluation criteria. Disagreement with an agency's judgment does not itself render the evaluation unreasonable. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115.

Contracting officers are required to conduct discussions with all offerors in the competitive range. Federal Acquisition Regulation (FAR) § 15.610(b). Such discussions must be meaningful and in order to be meaningful, agencies must generally point out weaknesses, excesses, or

deficiencies in proposals unless doing so would result either in disclosure of one offeror's technical approach to another or in technical leveling. Miller Bldg. Corp., B-245488, Jan. 3, 1992, 92-1 CPD ¶ 21. There is no requirement for discussions, however, with regard to subjects like corporate experience which are essentially matters of historical fact since it is unlikely that discussions will provide an opportunity for an offeror to change those facts and improve its competitive standing. See Science Application Int'l Corp., B-238136.2, June 1, 1990, 90-1 CPD ¶ 517.

Even where technical deficiencies in the conduct of a procurement may have occurred, prejudice is an essential element of a viable protest and when no prejudice is shown or is otherwise evident from the record, our Office will not disturb an award. Anamet Laboratories, Inc., B-241002, Jan. 14, 1991, 91-1 CPD ¶ 31.

Consonant with these legal principles, we have reviewed Stay's allegations regarding the technical evaluation and discussions in connection with each of the disputed subfactors and, as set forth below, we find that, although deficiencies occurred in the course of this procurement, the protester was not prejudiced in the final analysis.

CORPORATE EXPERIENCE

Both offerors were rated above average in this area and received positive comments by the evaluation team. Stay received a raw score of 4, which translated into 16 total points while Am-Pro received 5 points, which translated into 20 total points.

Section L of the RFP requested offerors to provide references and descriptions of four guard service contracts previously performed. It further provided that the previous customers "may be contacted." Irrespective of whether they were contacted or not, Section L also stated that this subfactor would, in part, be evaluated with respect to the "success of the offeror in building security and services."

Both offerors provided the requisite references which were not checked; Stay offered a self-assessment of its contract performance while Am-Pro included a number of congratulatory letters from former customers inside and outside the government. It appears that these letters contributed to Am-Pro's receipt of a high score of five under this subfactor.

Stay criticizes this rating and states that the references should have been checked. It also criticizes the letters included in the awardee's proposal insofar as some of them are Am-Pro internal memoranda, some are related to good

performance in isolated incidents and none is signed by a government contracting officer.

Section L did not require the Executive Office to check references. It did, however, require offerors to demonstrate past success in providing building security and services. The letters included by Am-Pro in its proposal do just that. The bulk of the letters are from senior government agency officials; while some relate to specific incidents, others are more general and all are praiseworthy of the offeror's experience in providing security services. In our view, Stay's objections constitute a disagreement with the evaluators' judgment concerning the significance of the letters and as such they do not provide a basis for concluding that the evaluation of this subfactor was unreasonable. Litton Sys., Inc., supra.

Likewise, we do not believe that the agency was required to hold discussions with regard to Stay's experience record since it is unlikely that its proposal could have been improved by holding discussions. Science Applications Int'l Corp., supra.

STAFFING PLAN

Section L instructed offerors to describe the skills of their personnel as they relate to the contract under this subfactor. Stay received 3 points (9 weighted points) and Am-Pro received 5 points (15 weighted points). Both proposals were acceptable or better and the evaluators did not cite any particular weakness in Stay's proposal under this subfactor.

Stay disagrees with its relative rating and principally argues that, while each firm's proposal addressed the basic requirements, its proposal should have been rated higher than Am-Pro's because it was more comprehensive and included a discussion of an employee performance evaluation program while the awardee's did not.

The protester's generalized contention that its proposal is more comprehensive than the awardee's does not provide a basis for us to conclude that the Executive Office acted unreasonably in distinguishing between the two proposals--which are not identical--as it did in this case. Stay's argument regarding the alleged superiority of its staffing plan based on the inclusion of a program used for evaluating the performance of its employees is, at best, only remotely related to this subfactor, which concerned the skills of the proposed personnel as they relate to contract requirements. In contrast, Am-Pro's staffing plan contains a discussion, with examples, of a program it plans to use to match the skills of its personnel with specific job requirements. At

best, Stay disagrees with the agency's judgment as to the relative merit of the competing proposals and, as stated above, this does not provide a basis for concluding that the agency acted unreasonably. Litton Sys., Inc., supra.

We do, however, find that Stay may not have been given a meaningful opportunity to improve its proposal for this subfactor because no discussions were held. The record does not indicate beyond a disparity in scores what the agency thought the differences between Stay's and Am-Pro's proposal were or what problems it perceived with Stay's proposal. Presumably the proposal was relatively weak in this area and, thus, discussions should have been held. Miller Bldg. Corp., supra. Accordingly, we believe that the protester may have lost an opportunity to receive up to six weighted points as a result of this procurement deficiency.

PLANS FOR MANAGING PERSONNEL

As Stay correctly suggests, this was the subfactor encompassing employee retention plans. Stay received 3 points (6 weighted points); Am-Pro received 5 points (10 weighted points). Am-Pro's program was specifically identified as a strength. The evaluators initially questioned the adequacy of the protester's retention plan although the score received for this subfactor indicates that they found it acceptable. The plan, which like Am-Pro's, included an incentive program for good performance by guards, was amplified to some extent in the protester's BAFO to indicate that the firm's high wages, lack of employee grievances, opportunities for advancement and financial stability all contributed to employee retention. Stay is particularly critical of the Executive Office for not taking these enhancements into account and raising its score after it submitted its BAFO.

The elements of Am-Pro's proposal relating to its plans for employee retention are substantively similar to--although not identical to--the features stressed by Stay in its initial and final proposals. As the protester concedes, the incentive programs and salary structures in the proposals parallel one another. Am-Pro's proposal also stressed that promotion potential and a company affirmative action program contribute to a high degree of employee retention; in addition, based on the premise that employees are more likely to stay in jobs to which their skills are matched, Am-Pro mentioned its program for matching personnel skills with specific jobs as a cornerstone of its retention program.

The principal distinguishing features in the evaluation of the proposals were the employee attrition rates reported by each offeror. Am-Pro reported a corporate-wide rate of less than 20 percent. Stay, on the other hand, reported 1989

statistics on four Washington-area contracts which had attrition rates ranging from 14 percent to 28 percent and averaging 23 percent.

Stay submits that the differences between these rates are statistically insignificant and should not have resulted in a disparity in scores. Stay claims that its rates are comparable to Am-Pro's when performance in a high turnover area like Washington, where its firm is based, is considered.

While the retention programs are similar in some respects, they are not identical. For example, Stay's program does not contain an emphasis on skills matching or affirmative action. While some of Stay's attrition rates are similar to Am-Pro's, they are in fact higher on average and thus provide a rational basis for the evaluators' conclusion that Am-Pro has a better retention program. At best, Stay has again merely expressed its disagreement with the evaluation results and this does not provide a basis for our disturbing the evaluation as unreasonable. Litton Sys., Inc., supra.

The record indicates that both oral and written discussions were held with regard to Stay's plans for retaining personnel. Stay's BAFO, by its own characterization, provided a discussion of the additional features of its program in this regard. While the contracting officer did review these changes, they were not significant enough to raise the protester's score. We have examined the BAFO section regarding this subfactor and note, for example, that the protester rests its plan on higher wage rates to promote retention. In view of the fact that Am-Pro pays its employees comparable rates, we do not have a basis for concluding that the contracting officer acted unreasonably in this regard in not raising the protester's score.

PLANS FOR MANAGING TOURS OF DUTY AND CONTRACT MANAGEMENT PLANS

The Plans for Managing Tours of Duty subfactor resulted in a two-point difference in both the initial and the weighted scoring with Stay receiving three points and Am-Pro receiving five points. Stay maintains that this result is arbitrary because there is nothing in Am-Pro's proposal related to this subfactor that is not included in its own. We have examined the proposals and agree with Stay. In the absence of any evaluation narrative describing why the agency liked the awardee's plans better than Stay's and in the absence of any obvious distinctions between the proposals as occurred under other subfactors, we are unable to conclude that Executive Office had a reasonable basis for assigning scores as it did under this subfactor.

The Contract Management Plans subfactor resulted in a one-point difference in both the initial and the weighted scoring with Stay receiving four points and Am-Pro receiving five. Stay makes essentially the same allegations with respect to this subfactor as it did with the subfactor relating to managing tours of duty and, based on our examination of the proposals, and in the absence of any evaluation narrative or obvious distinction between the proposals in this area, we also cannot conclude that the Executive Office had a reasonable basis for assigning scores as it did under this subfactor.

The record also does not contain an adequate explanation as to why discussions were not held with respect to either of these subfactors.

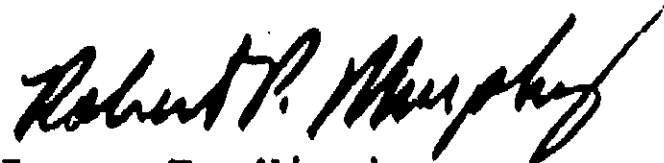
CONCLUSION

There were deficiencies in this procurement. The net result of these deficiencies, viewed in a light most favorable to Stay, was that it lost the opportunity to improve its weighted technical score by up to six points with regard to its staffing plans and a total of three additional points in the areas relating to managing tours of duty and contract management plans. When added to its actual score of 54, these "lost" points result in a technical score of 63--which is only 4 points higher than the erroneous score upon which the agency based its selection, and 8 points lower than Am-Pro's weighted technical score.

The agency made a cost/technical tradeoff decision based on a perceived difference in technical scores of 12 points, concluding that such a difference, consistent with the 3 to 1 weight in favor of technical merit over price, was not outweighed by a 4.5 percent price advantage in the protester's proposal. In our view, and given the relative weight of technical merit over price established in the RFP, a difference of approximately 11 percent in technical merit in Am-Pro's favor (based on awarding "lost" points to Stay) reasonably justifies the agency's cost/technical tradeoff and we thus find that Stay was not prejudiced by the errors which occurred prior to making the selection decision. See Anamet Laboratories, Inc., supra. Accordingly, we will not disturb the award. Finally, selection officials have considerable discretion in deciding which offer is most advantageous to the government and, while it is possible that other evaluators could have ranked the proposals differently, we properly can object only if we find no rational basis for the award decision or an inconsistency

with the evaluation criteria. On the record before us, the protester simply has not shown, nor are we able to find, that the award decision runs afoul of either test.
Unidynamics/St. Louis, Inc., B-232295, Dec. 21, 1988, 88-2 CPD ¶ 609.

The protest is denied.


for James F. Hinchman
General Counsel